

Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), “literature and advertisement” includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.
3. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:
 - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
 - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission’s Executive Director.
5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
 - a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
 - b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B), and comply with the requirements of A.R.S. § 16-913.

7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
 - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
 - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
 - i. The specific facts constituting the denial;
 - ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and
 - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities. ~~any exempt entity pursuant to Article 4 of these rules.~~
9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.
10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.
11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.

12. Under A.R.S. § 16-942, the Commission has the obligation to decide whether to impose civil penalties for "a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter," i.e., A.R.S. §§ 16-901 through -961. Some of the referenced "reporting requirements" are applicable to "political committees." According

to A.R.S. § 16-901(20), as amended in April 2015 by H.R. 2649 (Ch. 297), a “political committee” is any of the persons specified in subsections (20)(a)-(e) or (g)-(h) or any “association or combination of persons” (referenced as a “Group” in this rule) that qualifies under subsection (20)(f) because it “meets both of the following requirements: (i) is organized, conducted or combined for the primary purpose of influencing the result of any election ...,” and “(ii) knowingly received contributions or makes expenditures of more than five hundred dollars in connection with any election during a calendar year”

The same statute lists types of elections, referenced as “Listed Elections” in this rule. Whenever, to impose any penalty for violation of any reporting requirement of Chapter 6, Title 16, the Commission is called upon to decide whether a Group qualifies as a “political committee” under the definition in A.R.S. § 16-901(20)(f), the Commission shall apply the following:

a. The Commission shall consider a Group that is shown to be “organized” or “combined” for the primary purpose of influencing the results of any Listed Election as a “political committee,” provided that it meets the requirement of A.R.S. § 16-901(20)(f)(ii), regardless of the Group’s conduct at any time after its organization or combination.

b. Alternatively, the Commission shall consider a Group a “political committee,” provided that it meets the requirement of A.R.S. § 16-901(20)(f)(ii), if the Group is “conducted” for the primary purpose of influencing the results of any Listed Election. In determining whether a Group is “conducted” for the primary purpose of influencing the results of any Listed Election, the Commission shall presume that a Group has been “conducted” for such primary purpose if (1) it has made expenditures as defined in A.R.S. § 16-901(8) during a calendar year of \$500 or more, or (2) it has taken contributions as defined in A.R.S. § 16-901(5) during a calendar year of \$500 or more.

c. For purposes of deciding whether a Group has received contributions or made expenditures of \$500 in a calendar year, including for purposes of part (F)(12)(b) of this rule or A.R.S. § 16-901(20)(f)(ii):

(1) The Commission shall consider all expenditures and contributions made by the Group during that calendar year in connection with all Listed Elections collectively, as opposed to election-by-election.

(2) The Commission shall consider the Group to meet the \$500 test from the date the test is first met through December 31 of the calendar year in which the next legislative election occurs.

d. In determining for purposes of A.R.S. § 16-901(20)(f)(ii) whether a Group “knowingly” receives contributions or makes expenditures:

(1) The Commission shall presume that a Group knows of its own contributions and expenditures.

(2) If a Group transfers money or anything of value to a recipient that takes contributions as defined in A.R.S. § 16-901(5) or that makes expenditures as defined in A.R.S. § 16-901(8), the Commission shall presume that the Group knows that the transfer is an expenditure unless the Group has affirmatively restricted the transfer in a way that the recipient is prohibited from using the transfer for purposes of influencing any Listed Election, in which case the

Commission shall presume that the Group does not know that the transfer of money is an expenditure.

e. A person appearing before the Commission may rebut a presumption established by this part (F)(12) by clear and convincing evidence.